

**UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLUMBIA**

DR. KAMYAR KALANTAR, et al.,

Plaintiffs,

v.

**LUFTHANSA GERMAN AIRLINES, et
al.,**

Defendants.

**Civil Action 01cv00644
(HHK)**

ORDER

Before the court is plaintiffs' motion captioned "PLAINTIFFS' MOTION TO STRIKE DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AND MOTION TO SEAL RECORD AND FOR ENTRY OF PROTECTIVE ORDER OR IN THE ALTERNATIVE, FOR PLAINTIFFS' COUNSEL TO REVIEW CONFIDENTIALLY DEFENDANTS' MOTION FOR SUMMARY JUDGMENT AND MOTION TO SEAL RECORD AND FOR ENTRY OF PROTECTIVE ORDER AND TO FILE ANY RESPONSE THERETO UNDER SEAL," (document # 15). Upon consideration of the motion, defendants' opposition thereto, and the record of this case the court concludes that the motion should be granted in part.

Dr. Kamyar Kalantar is an Iranian born physician who lives in California. Dr. Kalantar is married to an American citizen, Dr. Grace Lee, and has been a permanent resident of the United States since 1993. Dr. Kalantar claims that on March 25, 2000, he attempted to board a Lufthansa German Airlines flight bound

for Germany at Dulles airport after being issued a boarding pass. However, he was not permitted to board the flight by Lufthansa employees after he refused to allow his carry-on luggage to be searched. Dr. Kalantar claims that defendants' insistence that he allow his carry-on luggage to be searched as a condition of his being allowed to board the flight, something not required of other passengers, was an unlawful discriminatory act. Dr. Kalantar also asserts that Lufthansa personnel made defamatory statements against him--calling him a security threat--and, without justification, caused him to be arrested. Plaintiffs' complaint asserts federal and common law causes of action.

On October 19, 2001, defendants filed an ex parte motion for summary judgment and requested that it be placed under seal, claiming that their actions were proper because they were authorized, indeed compelled, by a Federal Aviation Administration (FAA) security directive that, by law, defendants can not reveal. This law prohibits aircraft operators from releasing Federal Aviation Administration security directives provided to them "to persons other than those with an operational need-to-know without the prior written consent of the Administrator [of the Federal Aviation Administration]." 14 C.F.R.

§108.305(f)(2).¹

¹ At the hearing on plaintiffs' motion, counsel for defendants explained that the FAA imposes certain obligations on national carriers as a condition of their being able to fly in the United States. With respect to foreign carriers, they typically enter into contracts. "If the foreign carrier basically doesn't agree to be bound by everything that a national carrier is bound, they won't get flight privileges." Hearing transcript at 19.

On January 3, 2002, the court held a hearing on plaintiffs' motion. At the hearing, counsel for defendants informed the court that he had informed the FAA in writing about this lawsuit and inquired whether Lufthansa would be permitted to disclose the contents of the security directive. Defense counsel stated that Carla Martin, a FAA "department head," told him in a telephone conversation that while the FAA in similar cases had authorized the disclosure of similar directives to counsel, it would not assent to the disclosure of the contents of the directive to Dr. Kalantar or his attorney in this case. Defense counsel explained that Dr. Kalantar and his attorney are "involved in advocacy groups for Iranians fighting discrimination" and have a connection with a pro-Iranian website "that talks about how Iranians are supposedly discriminated against in various forums including in the airline industry and by Lufthansa. There is a list of attorneys whom people can contact if they feel they've been discriminated against because of their Iranian heritage and Mr. Pishevar is listed there. He is also listed as one of the board of directors or some sort of executive officer of the group." Hearing transcript at 25. According to counsel for defendants, Ms. Martin said that she had permitted disclosure of information in similar cases to the attorney because the attorney "[did] not appear to be emotionally involved or otherwise involved in the issue. And she felt that in those cases there wouldn't be a threat to the information being disseminated." Id.

Having considered the parties' submissions and the representations of counsel at the hearing, it is this 21st day of February, 2002, hereby

ORDERED that counsel for defendants shall deliver a copy of this ORDER to Jane Garvey, Administrator of the Federal Aviation Administration, and David G. Leitch, the Federal Aviation Administration's Chief Counsel, by no later than March 4, 2002, and shall file a praecipe indicating that he has done so; and it is further

ORDERED that defense counsel shall disclose its motion for summary judgment and the portion of the security directive on which the motion is based to counsel for plaintiffs on March 18, 2002; and it is further

ORDERED that plaintiffs' counsel shall not reproduce any of the material or disclose its contents to anyone, including his clients, and shall return the material to defense counsel immediately after this court has ruled on defendants' motion for summary judgment; and it is further

ORDERED that plaintiffs' counsel shall file plaintiffs' opposition to the defendants' motion, under seal, by not later than April 9, 2002; and it is further

ORDERED that defendants shall file their reply, under seal, to plaintiffs' opposition by no later than April 19, 2002.

Henry H. Kennedy, Jr.
United States District Judge